

§ 10.166 Accounting for benefit payments.

A representative payee is accountable for the use of benefit payments. The Office may require periodic written reports from the representative payee, and in certain cases, verification of how the funds were used. The representative payee shall keep records of how the funds were used so as to be able to furnish the following information to the Office:

- (a) The amount of benefit payments on hand at the beginning of the accounting period;
- (b) A description of how the benefit payments were used;
- (c) An accounting of the amounts of payments which were saved or invested;
- (d) The place(s) of residence of the beneficiary during the accounting period; and
- (e) The amount of the beneficiary's income from other sources during the accounting period so as to assist the Office in evaluating the use of the benefit payments.

Subpart C—Continuation of Pay

GENERAL

§ 10.200 Statutory provisions.

(a) Pub. L. 93–416, approved September 7, 1974, significantly revised the Act to provide that specified employees who file a claim for a period of wage loss caused by a traumatic injury shall be entitled, under certain circumstances, to have their regular pay continued for a period not to exceed 45 days.

(b) Continuation of pay shall be considered regular income and not compensation and unlike compensation, shall be subject to all taxes and other payroll deductions applicable to regular income.

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PROCEDURES

§ 10.201 Right to continuation of pay.

(a) An employee is not entitled to continuation of pay unless:

(1) The employee is one of the types of employees listed in § 10.5(a)(11)(i),

(iii), or (v), except that an individual selected pursuant to chapter 121 of title 28 and serving as a petit or grand juror but who is not otherwise an employee of the United States is not entitled to continuation of pay;

(2) The employee sustains a traumatic job-related injury;

(3) The employee files claim for a period of wage loss, as required by 5 U.S.C. 8118(a), within 30 days of the injury on a form approved by the Secretary. (Form CA–1 may be used for this purpose.); and

(4) The employee's disability begins within 90 days of the date of injury.

(b) An employee entitled to continuation of pay shall have regular pay continued without a break in time for a period not to exceed 45 calendar days of disability, unless the right to continuation of pay is controverted and pay is terminated under § 10.203 or is terminated under § 10.204. Where the employee stops work due to the disabling effects of the injury, the 45-day period starts with the first day or shift following the date or shift of injury during which the claimant is disabled, provided the disability begins within 90 days of the occurrence of the injury. With regard to the date of injury, the employing agency will keep the employee in a pay status for any fraction of the day or shift of injury for which the employee was disabled with no "charge" to the 45-day period. If the employee stops work for a part of a day or shift other than the day or shift of injury, that day or shift will be considered one calendar day for the purpose of counting 45 days. If a disabled employee returns to work with duties other than the duties performed at the time of injury, continuation of pay is chargeable only when there has been a formal assignment to an established job which is normally paid at a lower salary and would otherwise result in loss of income to the employee. Continuation of pay must be charged against the employee's 45-day entitlement when, due to the effects of the injury upon the employee, (1) A personnel action has been taken to assign or detail the employee to an identified position for which a position description

exists which is classified at a lower salary level than that earned by the employee when injured; or (2) a personnel action has been taken to change the employee to a lower grade, or to a lower rate of basic pay. When, due to the effects of the injury, an employee is changed to a different schedule of work which results in loss of salary or premium pay (e.g., Sunday pay or night differential) authorized for the employee's normal administrative workweek, the employee is entitled to continuation of pay for such wage loss. If the employee's job-related disability continues after entitlement to continuation of pay ceases, the employee shall be entitled to receive compensation subject to the provisions of 5 U.S.C. 8117.

(c) Where an employee's pay is continued under this subpart, it shall not be interrupted as a part of a disciplinary action, nor shall it be terminated as a result of a disciplinary action which terminates employment unless final written notice of termination of employment for cause was issued to the employee prior to the date of injury.

(d) The administration and interpretation of the Act, including section 8118 of the Act, is the function of the Office. While the employing agency shall make certain preliminary decisions with respect to an employee's entitlement to pay continuation under this subpart, final determinations as to such entitlement are a function of the Office.

(e) If the Office finds that the employee is not entitled to continuation of pay after it has been paid, the payments, at the employee's option, shall be charged to annual or sick leave or considered overpayments of pay under 5 U.S.C. 5584.

(f) If the Office determines that pay has been continued at an incorrect rate, the Office shall notify the employing agency and the employee of the correct rate of pay, and the employing agency shall make the necessary adjustment.

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§ 10.202 Election of annual or sick leave.

An employee may use accumulated annual or sick leave, or such leave as may be advanced by the employing agency, instead of claiming continuation of pay; however, the time provisions of 5 U.S.C. 8117, governing the date upon which an employee's entitlement to compensation begins, do not begin to run until the use of annual or sick leave ends. The "buy back" provisions specified in § 10.310 may not be used to repurchase the leave taken while an employee was otherwise eligible for pay continuation as provided by this subpart. An election to use annual or sick leave is not irrevocable and an employee may subsequently request continuation of pay in lieu of previously requested annual or sick leave; however, such request must be made within one year of the date the leave was used or the date of the Office's approval of the claim, whichever is later. Where an employee is eligible, the employing agency shall, subject to the 45-day limitation, convert and restore the leave previously used and, if any of the 45 days of COP remains unused, shall continue pay prospectively. The use of leave may not be used to delay or extend the 45-day continuation of pay period or to otherwise affect the time limitations as provided by section 8117. Therefore, where leave is used during a period when COP is otherwise payable, and the employee does not request that such leave be converted and restored, the 45 days will be counted as though the employee had been in a continuation of pay status.

[52 FR 10516, Apr. 1, 1987]

§ 10.203 Controversion by employing agency.

(a) With respect to continuation of pay under 5 U.S.C. 8118, the employing agency shall, on the basis of information submitted by the employee, or secured on investigation, controvert a claim and terminate an employee's pay only if:

(1) The disability is caused by an occupational disease or illness; or

(2) The employee is the type employee defined by § 10.5(a)(11)(ii) or (iv), or is an individual selected pursuant to